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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN CRUZ,

Defendant and Appellant.

B286519

(Los Angeles County
Super. Ct. No. VA144967)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvonne T. Sanchez, Judge. Affirmed as modified.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb and David W. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

A jury found defendant Martin Cruz guilty of assault with a deadly weapon in violation of Penal Code¹ section 245, subdivision (a)(1) and disobeying a domestic relations court order in violation of section 273.6, subdivision (a). At sentencing, the trial court issued a 10-year domestic violence protective order pursuant to section 136.2, subdivision (i)(1) for the protection of victim A.F., who was defendant's neighbor.

On appeal, defendant contends the trial court erred by issuing the domestic violence protective order because there was no statutory authority to do so. The Attorney General concedes and we agree that the court erred in issuing the protective order. Thus, we will modify the judgment to strike the protective order and affirm the judgment as modified.

II. BACKGROUND

On June 8, 2017, defendant had an argument with his then-pregnant girlfriend T.P. at their apartment in South Gate. He left the apartment, but later returned. He was standing outside the apartment, when A.F., who lived next door, came outside. Defendant threw a glass beer bottle at him. Defendant then taunted A.F. and the two men engaged in a fist fight. At that time, defendant was subject to a domestic violence protective order that prohibited him from coming within 100 yards of T.P.

On July 31, 2017, the Los Angeles County District Attorney filed an information charging defendant with: assaulting A.F.

¹ Further statutory references are to the Penal Code unless otherwise indicated.

with a deadly weapon, in violation of section 245, subdivision (a)(1) (count 1); making criminal threats against A.F., in violation of section 422, subdivision (a) (count 2); battering T.P., in violation of section 243, subdivision (e)(1) (count 3); violating a protective order, in violation of section 166, subdivision (c)(1) (count 4); and disobeying a domestic relations court order, in violation of section 273.6, subdivision (a) (count 5). At the preliminary hearing, the prosecution dismissed count 4. At trial, the prosecution dismissed count 2.

Following trial, a jury found defendant guilty of assaulting A.F. with a deadly weapon as charged in count 1, and disobeying a domestic relations court order as charged in count 5, but found him not guilty of battering T.P., as charged in count 3.

Defendant admitted he had a prior conviction in July 1, 2009, and that it was a strike pursuant to section 1170.12. The trial court found defendant was in violation of his probation in two other cases, TA138393 and 7DN00639.

At the sentencing hearing, the trial court terminated probation as to case number 7DN00639, and ordered defendant to serve 364 days in county jail with time served. The trial court ordered defendant to serve two years in state prison for the assault with a deadly weapon conviction, doubled to four years due to the prior strike under section 1170.12. The trial court also terminated probation in case number TA138393, and sentenced defendant to serve three years in state prison to run concurrently with the sentence in count 1. On count 5, defendant was ordered to serve 365 days in county jail consecutively, which could be served at any institution. Defendant was awarded 33 days of presentence custody credit for the current conviction. He was

awarded 78 days of presentence custody credit from case number TA138393.

The trial court also issued a domestic violence protective order against defendant for the protection of A.F., not T.P. The trial court ordered defendant to not harass, strike, threaten, follow, stalk, or molest A.F. It further ordered defendant to surrender any firearm to law enforcement. It prohibited defendant from: dissuading A.F. from testifying or making a report to law enforcement; obtaining the address or location of A.F.; contacting A.F.; and being within 100 yards of A.F. or A.F.'s residence. The court stated the order was effective for 10 years. Although the trial court did not orally state the statutory grounds for the order at the sentencing hearing, it filed a written Judicial Council form which stated that the protective order was issued pursuant to section 136.2, subdivision (i)(1).

III. DISCUSSION

Defendant contends the trial court did not have statutory authority to issue the protective order and the Attorney General agrees. Issues of statutory interpretation are reviewed de novo. (*People v. Race* (2017) 18 Cal.App.5th 211, 217; *People v. Delarosarauda* (2014) 227 Cal.App.4th 205, 210.)

At the time of defendant's conviction, section 136.2, subdivision (i)(1) provided: "In all cases in which a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing,

shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court.”² Thus, “section 136.2[, subdivision (i)(1)] authorizes a postconviction restraining order (1) when the crime qualifies as a ‘domestic violence’ crime, and (2) the protected person qualifies as a ‘victim.’” (*People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 466.)

Defendant was not convicted of any of the enumerated crimes in section 136.2, subdivision (i)(1) as against A.F. Defendant was not charged with or convicted of violating sections 261 (rape), 261.5 (unlawful sexual intercourse with a person under 18), or 262 (spousal rape). Nor was he charged with a crime that required him to register as a sex offender pursuant to section 290, subdivision (c). Thus, section 136.2 did not permit the issuance of a protective order in favor of A.F. unless defendant was “convicted of a crime involving domestic violence as defined in Section 13700 or in section 6211 of the Family Code.” Those sections define “domestic violence” as abuse committed against a person “who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.” (§ 13700, subd. (b); see also Fam. Code, § 6211 [domestic violence is abuse against spouse, former spouse, cohabitant, former cohabitant, person with whom suspect has had a child, person with whom suspect has dating or engagement relationship, child of a party, or “[a]ny other person related by consanguinity or affinity within the second degree”].) While

² Section 136.2 was subsequently amended (Stats. 2017, ch. 270, § 1; Stats. 2018, ch.805, § 1), but the amendments do not affect the issue here.

defendant was convicted of committing a crime of abuse against A.F., there was no evidence that A.F. and defendant were in any of the relationships enumerated above. Thus, defendant was not convicted of a crime “involving domestic violence” as against A.F., and section 136.2, subdivision (i)(1) does not support the issuance of the protective order here.³ We recognize that “[i]t is not the content or format of the Judicial Council form that determines the propriety of the challenged protective order, but the authorizing statute.” (*People v. Robertson* (2012) 208 Cal.App.4th 965, 996.) The Attorney General has not identified any other statute that would provide a basis for the trial court to issue the order protecting A.F. in this case. The trial court thus erred by issuing the protective order. Accordingly, we will strike the protective order and otherwise affirm the judgment as modified.

³ We need not decide whether the court could have issued a criminal protective order in favor of T.P. because the trial court expressly terminated an earlier protective order that listed T.P. as the protected person.

IV. DISPOSITION

The judgment is modified by striking the November 20, 2017 protective order. As so modified, the judgment is affirmed.

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KIM, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.